

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**NOTICE**

March 27, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-2352**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**MILWAUKEE INSURANCE COMPANY,**

**Plaintiff-Respondent,**

**v.**

**RICHARD HURD, d/b/a TRI-STATE ENTERPRISES;**

**Defendant,**

**DAVID T. MOORE, a/k/a DAVID MOORE YARROW,**

**Defendant-Third Party Plaintiff-Appellant,**

**STATE OF WISCONSIN (AND ITS DEPARTMENT  
OF HEALTH AND SOCIAL SERVICES AND ITS  
DIVISION OF HEALTH),**

**Defendant-Third Party Plaintiff,**

**NATIONAL INDEMNITY CO.,**

**Third Party Defendant-Respondent.**

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APPEAL from a judgment of the circuit court for Vernon County:  
MICHAEL J. ROSBOROUGH, Judge. *Reversed and cause remanded.*

Before Eich, C.J., Dykman, P.J., and Deininger, J.

PER CURIAM. David Moore appeals from a summary judgment dismissing National Indemnity Company (NIC) as a third-party defendant to his personal injury claim. The issue is whether NIC provided liability insurance to Moore's alleged tortfeasor, Richard Hurd, at the time of Moore's injury. We conclude that the trial court erred in determining liability coverage was not in effect, and we therefore reverse.

Hurd operates a house moving business. From July 31, 1991 until July 31, 1992, and at other times, he insured his business through NIC. In May 1992, NIC sent Hurd a form nonrenewal notice stating that Hurd's policy would not be renewed because "Broker No Longer Represents Company." The NIC-Hurd policy contained the following provision, as required by statute:<sup>1</sup>

We may refuse to renew this policy because of the termination of an insurance marketing intermediary's contract with us, but only if the notice of nonrenewal contains an offer to renew the policy with us if we receive a written request from the first Named Insured prior to the renewal date.

However, Hurd did not receive the required offer to renew because an empty box next to the required language on the renewal notice was not checked. The notice stated that all applicable items were marked with an "X" in the adjacent box.

Hurd did not respond to the nonrenewal notice for reasons he was unable to remember or explain when deposed. On August 6, 1992, seven days after the policy

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<sup>1</sup> Section 631.36(4m), STATS.

ostensibly expired, Moore was injured while helping Hurd move a house. Moore then sued both Hurd and NIC, contending that Hurd's policy with NIC remained in effect on August 6, 1992, because the nonrenewal notice did not adequately inform Hurd of his right to request renewal. The trial court granted summary judgment to NIC, resulting in this appeal.

Summary judgment is appropriate in cases where there is no genuine issue of material fact and the moving party has established entitlement to judgment as a matter of law. *Germanotta v. National Indem. Co.*, 119 Wis.2d 293, 296, 349 N.W.2d 733, 735 (Ct. App. 1984). If a dispute of any material fact exists, or if the material presented on the motion is subject to conflicting factual interpretations or inferences, summary judgment must be denied. *State Bank of La Crosse v. Elsen*, 128 Wis.2d 508, 512, 383 N.W.2d 916, 918 (Ct. App. 1986). We independently decide whether summary judgment is appropriate without deference to the trial court. *Schaller v. Marine Nat'l Bank*, 131 Wis.2d 389, 394, 388 N.W.2d 645, 648 (Ct. App. 1986).

Sections 631.36(4)(am) and (4m), STATS., provide that an insurer cannot refuse to renew a policy after termination of a broker's contract unless "the notice of nonrenewal or cancellation contains an offer to continue or renew the policy with the insurer if the insurer receives a written request from the policyholder prior to the cancellation or renewal date." However, the notice requirements do not apply "if the policyholder ... has requested or agreed to nonrenewal ...." Section 631.36(4)(b), STATS. Absent an agreement or other exception to the notice requirements under § 631.36(4)(b), coverage continues under the existing policy when the insurer fails to give the required notice of nonrenewal. See *Sausen v. American Family Mut. Ins. Co.*, 121 Wis.2d 653, 655-56, 360 N.W.2d 565, 566 (Ct. App. 1984).

NIC does not dispute that its notice was deficient under § 631.36(4m), STATS., but contends that the undisputed facts establish that Hurd nevertheless agreed to the nonrenewal. The record, however, does not allow a conclusion that the only reasonable inference is that Hurd agreed to the nonrenewal. NIC relied on the fact that Hurd had shown a past pattern of nonrenewal or cancellation when he did not have an imminent house moving project, and that he sought and obtained insurance from NIC six weeks after the July 31, 1992 cancellation date. However, it is also undisputed that NIC's nonrenewal notice informed Hurd, without qualification, that he could not renew the policy, and that Hurd, in fact, did perform a moving project shortly after the nonrenewal. An inference that Hurd failed to renew the NIC policy on July 31, 1992, because he was not aware he had the option to do so, is not necessarily negated by the record.

Taking all the facts together, we cannot conclude that an inference that Hurd's inaction signified his agreement to nonrenewal is the only reasonable inference on the present record. Summary judgment dismissing Moore's claim against NIC was thus improper.

*By the Court.*—Judgment reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

